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AUSTIN RAPP & HARDMAN 170 South Main Street, Suite 735 SALT LAKE CITY, UT 84101			DONLON, RYAN D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/561,897	SHEFFIELD ET AL.
	Examiner	Art Unit
	RYAN D. DONLON	3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 May 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10, 12-26, 28 and 29 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10, 12-26 and 28-29 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Claim Objections

2. Claim 1 is objected to because this claim recites the limitation "the processor" in line 4. While one interpretation of this limitation would refer to the "data processing device" appropriate clarification is necessary to ensure proper antecedent basis.
3. Claim 19 objected to because the term "marshall" is an apparent misspelling of the term "marshal". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. As per claim 25, it is unclear what is intended by the phrase "a group of lowest unique bids". It appears as though Applicant has claimed a group consisting of only a single item, the lowest unique bid, which is contrary to what the term "group" implies. For the purposes of compact prosecution, the Examiner will interpret this to mean --the lowest unique bid from a group of bids--.

6. Appropriate corrections are required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-10 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzog et al. 2004/0059663 A1 (hereinafter Herzog) in view of Mendiola et al 2004/0058694 A1 (hereinafter Mendiola).

9. As per **claim 1:**

Herzog discloses an auction system for facilitating bidder participation in an auction for the purchase of a lot, comprising:

at least a first data processing device and a memory in communication with the data processing device (see at least paragraph [0012]), the memory storing instructions executable by the processor to: receive a plurality of messages from a plurality of bidders for the lot, each message including a bid for the lot (see at least paragraph [0032]);

send a bid acceptance messages message to each of said bidders notifying the bidder of the status of the bidder's bid (see at least paragraph [0035]);

charge each bidder for sending the bid acceptance message (see at least paragraph [0034] wherein Herzog discloses charging the bidder, "for sending the bid

acceptance message" is considered intended use since the method would be performed the same way, regardless of what the charge is intended for);

 determine a bidder associated with a unique bid for the lot, wherein at a close of the auction the unique bid is a winning bid in the auction for the purchase of the lot (see at least paragraph 0025)

10. Herzog does not disclose: sending a bid acceptance messages message by SMS;

11. However Mendiola discloses sending a bid acceptance messages message by SMS (see at least paragraph [0188])

12. It would have been obvious to one of ordinary skill in the art to include in the system for auctioning a lot of Herzog, the system for sending acceptance messages as taught by Mendiola because this would have provided convenient communication of messages (see at least Mendiola paragraph [0022]). Further because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

13. Herzog and Mendiola together do not teach a lowest unique bid is a winning bid in the auction. Rather, Herzog discloses determining a bidder associated with the highest unique bid for the lot (see at least paragraph [0011]) and further discloses accepting "some unique... offer somehow correlated to a price of the service or product being offered".

14. Further the Applicant discloses the well known system for auctioning a service or product wherein the lowest bid is accepted (see at least Applicant's specification page 1 lines 17-20)

15. Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself- that is in the substitution of the reverse auction, disclosed as old and well known by the Applicant, for the ascending auction of the primary reference. Thus, the simple substitution of one known element for another producing a predictable result renders the limitation obvious.

16. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings Herzog, Mendiola and the old and well known system for conducting a reverse auction to obtain the invention as specified in claim 1.

17. As per **claim 2:**

Mendiola discloses an auction system of claim1, wherein the plurality of messages is received via SMS messaging (see at least paragraph [0181]-[0184]).

18. As per **claim 3:**

Herzog and Mendiola do not disclose an auction system of claim1, wherein the instructions are further executable to charge each bidder by sending the bid acceptance message by a reverse billed SMS message.

19. However Official Notice is taken that it was well known in the art at the time of the invention to reverse bill SMS messages. For example, it was well known for businesses to send reverse billed SMS messages for paying for images, ring tones, vending machines, or a variety of other products.

20. It would have been obvious to one of ordinary skill in the art to include in the system for auctioning of Herzog and Mendiola (see the rejection of claim 1), the well known system for reverse billing using SMS for paying for services because the claimed invention would provide a convenient system for charging customers. Further the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

21. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings Herzog, Mendiola and the well known system for reverse billing SMS messages to obtain the invention as specified in claim 3.

22. As per **claim 4:**

Herzog discloses an auction system of claim1, wherein the instructions are further executable to limit each bidder up to a maximum number of bids per auction (see at least paragraph [0037]).

23. As per **claim 5:**

Herzog discloses an auction system as claimed in claim 1, wherein the bid acceptance message notifies the bidder that either their bid is the current lowest unique bid, their bid is not unique (see at least claim 5) or their bid is unique, but is not currently the lowest unique bid (for the purposes of examination, this claim is interpreted in the alternative).

24. As per **claim 6:**

Mendiola discloses an auction system as claimed in claim 1 wherein instructions are further executable to:

sending a notification message to a bidder when the status of the bidder's bid changes (see at least paragraph [0181]).

25. As per **claims 7 and 8:**

Herzog does not disclose an auction system as claimed in claim 6, wherein the status of the bidder's bid changes to not currently being the lowest unique bid and the notification message notifies the bidder that their bid is no longer the lowest unique

26. Herzog does disclose notifying a bidder that their offer was not unique (see at least claim 6). Further Herzog discloses a closest unique bid auction (see at least paragraph [0040])

27. Further Mendiola discloses sending a notification message when the status of the bidder's bid changes and the bidder is alerted of the change (see at least paragraph [0181])

28. It would have been obvious to one of ordinary skill in the art to include in the notifying a user that their bid is not unique of Herzog in a closest unique bid auction, the system for sending a notification message with the status of the bidders bid has changed as taught by Mendiola because this would have added a convenient communication of messages (see at least Mendiola paragraph [0022]) between users or clients and a host server.

29. Mendiola does not disclose and the price of the bidder's bid; however Mendiola discloses sending the current highest price with this message.

30. It would have been obvious to one of ordinary skill in the art to substitute the current highest bid, with bidder's price in a unique price auction because this would have provided the bidder with a guide to making a decision about their next bid, just as the current highest bid does from the Mendiola reference.

31. Further the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

32. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings Herzog and Mendiola to obtain the invention as specified in claims 7 and 8.

33. As per **claim 9**:

Mendiola discloses an auction system as claimed in claim 1, wherein the received bidder messages are passed at least partially over the internet before processing the bid or the bid acceptance messages are passed at least partially over the internet before being sent by SMS (see at least paragraphs [0178]-[0182]).

34. As per **claim 10**:

The method as claimed in claim 1, wherein the communication with the bidders is handled by software in real time (see at least paragraphs [0015] and [0148]).

35. As per **claim 29 (New)**:

36. Herzog disclose the auctioning system as claimed in claim 1, wherein the instructions are further executable to: determine that the auction of the lot has ended; and send a notification (reads on “close the sale with the winning bidder”) message to the winning bidder that the bidder has placed a winning bid (see at least paragraph [0042]).

37. Examiner notes the limitation “whose bid is the lowest unique bid” has been addressed in claim 1 above.

38. Claims 12-13, 15-16, 18-26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mendiola in view of Herzog and further in view of M2 Presswire "Link77: Link77 introduces reverse charge SMS billing service for ringtones and logos." (Hereinafter Link77) published December 18, 2001.

39. As per **claim 26**:

Mendiola disclose an auctioning system for facilitating bidder participation in an auction for the purchase of a lot, comprising:

at least a first data processing device and a memory in communication with the data processing device, the memory storing instructions executable by the processor to: receive a bid data item over a computer network to which the computer system is connected, the bid data item being derived from a bid message sent by a bidder (see at least paragraph [0184]);

determine whether the bid data item is the leading bid for an auction; if it is determined that the bid data item is the current lowest unique bid, then to generate a bid acceptance message indicating that the bid is the current lowest unique bid, and if it is determined that the bid data item is not the current lowest unique bid, then to generate a bid acceptance message indicating that the bid is not the current lowest unique bid (see at least paragraph [0188]);

determine a destination telecommunications device phone number for the acceptance message (see at least paragraph [0188]);

and send the acceptance message, at least partially over the computer network, for transmission to the bidder at the destination telecommunications device

40. Mendiola does not disclose determine whether the bid data item is the current lowest unique bid for an auction and wherein at a close of the auction a lowest unique bid is a winning bid in the auction for the purchase of the lot;

41. However Herzog discloses a highest unique bid auction. Further the applicant discloses the old and well known reverse auction (where the lowest bid wins) (see applicant's specification page 1 lines 17-20).

42. Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself- that is in the substitution of the reverse auction, disclosed as old and well known by the Applicant, for the ascending auction of the primary reference. Thus, the simple substitution of one known element for another producing a predictable result renders the limitation obvious.

43. Mendiola and Herzog do not disclose a reverse billed SMS message.

44. However Herzog discloses billing the bidder (see at least paragraph [0034]), Further Link77 discloses reverse billing a user for a service (see at least Link77 abstract)

45. Therefore it would have been obvious to It would have been obvious to one of ordinary skill in the art to include in the method of interacting with bidders using SMS of Mendiola, the methods of billing bidders and selecting a winner as disclosed by Herzog

and the method of reverse billing using SMS as taught by Link77 because this would have added a convenient method of billing and paid for the convenience of SMS messages. Further, the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

46. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 26.

47. As per **claim 12**:

Mendiola discloses an auction system as claimed in claim 26 wherein the instructions are further executable to:

receive an auction identifier data item (“UIN”) with the bid data item, the auction identifier data item being derived from the same bid message sent by a bidder as the bid data item;

and use the auction identifier data item to determine an auction corresponding to the auction identifier data item (see at least paragraph [0185]-[0187]).

48. As per **claim 13**:

Mendiola discloses an auction system as claimed in claim 26 and further comprising:

validate the bid data item to determine whether the bid is an acceptable bid for the auction (see at least paragraph [0032]).

49. As per **claim 15**:

Mendiola does not disclose an auction system of claim 26, wherein the instructions are further executable to:

check whether the bid data item is in the correct bid units;

and if not, then convert the bid data item into the correct bid units.

50. However Official Notice is taken that it was well known in the art at the time of the invention to convert currencies when receiving a bid. For example when receiving a bid in an international auction, it was well known to convert the currencies to a base currency (such as dollars), using a going exchange rate, in order to compare the bids for determining a winner.

51. It would have been obvious to one of ordinary skill in the art to include in the system for receiving an bid using SMS messages of Mendiola, Herzog and Link77 (see rejection of claim 26 above), the well known system for converting currencies of bids because this would have allowed for international auctions .Further because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

52. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 26, and the well known system for converting currencies to obtain the invention as specified in claim 15.

53. As per **claim 16**:

Mendiola does not discloses an auction system of claim 26 wherein the instructions are further executable to generate a unique identifier for each bid data item received.

54. However Official Notice is taken that generating a unique ID (such as a highly precise timestamp) for each received bid is old and well known in the art at the time of the invention. For example, many electronic auctions will timestamp each incoming bid to determine the winning bid in case of a tie, or for auditing purposes on stock exchanges.

55. It would have been obvious to one of ordinary skill in the art to include in the system for receiving bids of Mendiola, Herzog and Link77 (see rejection of claim 26 above), the well known system for generating a unique ID for each incoming bid because this would have allowed for proper auditing of the auction service. Further, because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

56. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 26, and the well known system for generating a unique ID for each incoming bid to obtain the invention as specified in claim 16.

57. As per **claim 18**:

Mendiola does not disclose an auctioning system of claim 26, wherein instruction executable to determine whether the bid data item is the current lowest unique bid for the auction comprises instructions executable to:

carry out a look up of a database of stored bid data items for the auction;
determine whether the number of stored bids at the bid data item value is zero;
if the number of stored bids at the bid data item value is zero then carry out a look up of the database of stored bid data items for the auction to determine the current lowest unique bid value;

and determine whether the bid data item value is less than the current lowest unique bid value.

58. However as addressed in claim 26, Herzog discloses a highest unique bid auction, and in view of the applicant's admission of a lowest bid auction (a reverse auction); a lowest unique bid auction would have been obvious to one skilled in the art at the time of the invention (see the rejection of claim 26 above).

59. Further, Herzog discloses an auctioning system for determining the highest unique bid (see at least paragraphs [0013] and [0027]) comprising instructions to:

60. carry out a look up of a database of stored bid data items for the auction (see at least paragraph [0027]);

determine whether the number of stored bids at the bid data item value is zero (determines uniqueness of a bid; see at least paragraph [0027]);

if the number of stored bids at the bid data item value is zero then carrying out a look up of the database of stored bid data items for the auction to determine the current lowest unique bid value and determining whether the bid data item value is less than the current lowest unique bid value (determining if there are any unique bids higher (analogous to lower) price, thus finding a highest unique price; see at least paragraph [0027]).

Therefore it would have been obvious to one of ordinary skill in the art to include in the system for interacting with bidders using SMS of Mendiola, the system for billing bidders and selecting a winner as disclosed by Herzog and the system for reverse billing using SMS as taught by Link77 for at least the reasons put forward in the rejection of claim 26 above.

61. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 18.

62. As per **claim 19**:

Mendiola discloses an auction system as claimed in claim 26, further comprising

instructions executable to --marshal-- the bid acceptance message, which comprise instructions executable to:

select a message template for the acceptance message (see at least paragraph [0188]);

look up stored variable data items (user's phone number);

and populate the message template with the variable data items (see at least paragraph [0188]).

63. As per **claim 20**:

Mendiola discloses an auctioning system as claimed in claim 26, wherein instructions executable to send the acceptance message includes instructions executable to load a message object with message data (the message) and bidder data (bidder's phone number) (see at least paragraph [0188]).

64. As per **claim 21**:

Mendiola discloses an auction system of claim 20, wherein sending the acceptance message further includes placing the message object in a message queue table (see at least paragraph [0188] where the message queue table is silently disclosed. As the messages are taught to be sent, it must be that the messages are sent through the "store and forward" network of the SMSC, see also paragraph [0016]).

65. As per **claim 22:**

Mendiola discloses an auction system of claim 21, wherein sending the acceptance message further includes:

polling the message queue table to identify new messages;

passing new messages to an aggregator service for transmission as an SMS message to the bidder (see at least paragraph [0188] where the message queue table is silently disclosed. As the messages are taught to be sent (transmission), it must be that the messages are sent through the “store and forward” (store new messages and forward them on) network (aggregator) of the SMSC, see also paragraph [0016]).

66. As per **claim 23 and 24:**

Mendiola does not disclose an auction system of claim 22, wherein the instructions are further executable to receive a receipt ID from the aggregator for the message passed to the aggregator and store the receipt ID when received and determine whether the receipt ID has been received and update a status associated with the sent message.

67. However Official Notice is taken that is was well known in the art to receive a delivery confirmation (sometimes known as a delivery report) (a receipt ID) from an SMS server (aggregator) and store the ID when received and updating the delivered status associated with the sent message. For example, when an SMS is delivered, a mobile service provider may receive a delivery confirmation (receipt ID) from the mobile phone for the SMS message. For billing and auditing purposes this information is stored

by the mobile phone service provider, because the fees associated with the SMS message are only charged if the message is delivered. Further the service provider continues to attempt to deliver the SMS message until the SMS message has been delivered and the delivery confirmation has been received (updating a status) or until the provider determines the message is undeliverable.

68. It would have been obvious to one of ordinary skill in the art to include in the system for accepting bids for a live auction using SMS phone number of Mendiola, Herzog and Link77 (see rejection of claim 26 above), the well known system for receiving, storing and determining using delivery confirmations because the claimed invention is merely a combination of *old and well known* elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

69. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 23 and 24.

70. As per **claim 25:**

71. Mendiola does not disclose determining the lowest bid for --the lowest unique bid from a group of bids--for which the bid acceptance message has been received. However Mendiola does disclose determining the winning (see at least paragraph

[0178]) from a group of bids for which the bid acceptance message has been received (see at least paragraph [0188]).

72. Mendiola does not disclose identifying the winning bidder as the lowest unique bid. However Herzog in view of the Applicant's admission renders the system for identifying the lowest unique bid as obvious (see the rejection of claim 26).

73. It would have been obvious to one of ordinary skill in the art to include in the system for selecting a winning bid of Mendiola, the system for selecting the highest winning bid as taught by Herzog and the well known system for conducting a reverse auction for at least the reasons recited in the rejection of claim 26.

74. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 25.

75. As per **claim 30 (New)**:

76. Herzog disclose the auctioning system as claimed in claim 26, wherein the instructions are further executable to: determine that the auction of the lot has ended; and send a notification message (reads on "close the sale with the winning bidder") to the winning bidder that the bidder has placed a winning bid.

77. Examiner notes the limitation "whose bid is the lowest unique bid" has been addressed in claim 26 above.

78. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mendiola in view of Herzog and further in view of Link77 as applied to claim 26 above, and further in view of Abeshouse et al., EP 1220126 A2 (hereinafter Abeshouse), published March 7, 2002.

79. As per **claim 14**:

Mendiola discloses an auctioning system as claimed in claim 26 wherein the instructions are further executable to:

poll a message store to identify new messages (see at least paragraph [0185]-[0188]);

80. use a mobile phone telephone number data item to determine whether the bid is associated with an auction and if it is then loading message data into a message object (the response to the user) (see at least paragraph [0186]-[0188] wherein it is shown the mobile phone telephone number data item is used by the SMSC server to receive the SMS message, then using the UIN from the recipient the message is associated with the auction); and pass the message object to an auction application (see at least paragraph [0188] wherein the message object is passed to the auction application's SMS sending system).

81. Mendiola, Herzog and Link77 do not disclose if the bid is not associated with a live (live is silently disclosed since Mendiola discloses an auction duration (see at least paragraph [0165])) session for the auction, then using an auction identifier data item to

determine whether the bid is for an auction and if it is then loading message data into a message object.

82. Abeshouse discloses if the bid is not associated with a live session for the auction, then using an auction identifier data item to determine whether the bid is for an auction and if it is then loading message data into a message object (see at least claim 9, paragraphs [0013]-[0020] wherein it is disclosed if a bid is received after the close of an auction, the system checks to see if the bid is for an auction which has closed accepting the bid (loading message data into a message object)).

83. It would have been obvious to one of ordinary skill in the art to include in the system for accepting bids for a live auction using SMS phone number of Mendiola, Herzog and Link77 (see rejection of claim 26 above), the system for accepting bids as taught by Abeshouse because this would have allowed for determining whether a submitted bid should be accepted when it is sent from a participant processor prior to closing time as perceived at the participant processor, but after the auction processor perceived closing time (see at least paragraph [0019]). Further because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

84. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 26, and to further include the teachings of Abeshouse to obtain the

invention as specified in claim 14.

85. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mendiola in view of Herzog and further in view of Link77 as applied to claim 13 above, and further in view of Hong Kong's Tender, published June 2000.

86. As per **claim 17**:

Mendiola discloses an auctioning system of claim 13, wherein instructions executable to validate the bid data item include at least one of the following: instructions executable to determine whether an auction is active (see at least paragraph [0165]);

and instructions executable to determining whether the bid data item falls within a range of acceptable bid values (see at least paragraph [0171]).

87. Mendiola and Herzog do not disclose instructions executable to determine whether the bid exceeds a maximum number of bids for the bidder (see at least paragraph [0037] wherein a maximum number of bids);

88. Hong Kong Tender discloses determining whether the bid exceeds a maximum number of bids for the bidder (see at least page 2 "participation rules");

89. It would have been obvious to one of ordinary skill in the art to include in the system for receiving bids of Mendiola, Herzog and Link77 (see rejection of claim 26 above), the system for determining whether the bid exceeds a maximum number of bids for the bidder as taught by Hong Kong's Tender because the claimed invention is merely a combination of old elements, and in the combination, each element merely

would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

90. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 26, and Hong Kong's Tender to obtain the invention as specified in claim 17

Response to Arguments

91. In light of Applicant's amendments filed on 13 May 2009, the 35 U.S.C. § 101 rejections of claims 1-28 and the 35 U.S.C. § 112 2nd paragraph rejections to claims 9 and 28 have been withdrawn.

92. With regard to Applicant's arguments regarding the 35 U.S.C. § 112 2nd paragraph rejections to claim 25, the examiner has considered them but they are not persuasive. The claims recite a group of bids constrained by both the singular "unique" and the superlative "lowest". These constraints logically identify only singular quantity (e.g. the lowest unique bid). Therefore how Applicant is claiming a group of a singular quantity is logically unclear.

93. Applicant's arguments filed 13 May 2009, regarding the rejections of claims 1-28 have been fully considered but they are not persuasive.

94. With respect to Applicant's arguments that Herzog teaches away from "lowest unique bid", the examiner respectfully disagrees. While the embodiment in which Herzog teaches its unique bid auction system, does benefit the seller by soliciting higher

bids, this does not teach the system would not work in a reverse auction. As the Examiner and the Applicant have both pointed out (see paragraph 23 of the 13 November 2008 Office Action) soliciting lower bids (e.g. "reverse auctions") are old and well known. The mere substitution of soliciting higher bids for those of lower bids is clearly a design choice and does not unobviously affect the outcome of the system.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. DONLON whose telephone number is

(571)270-3602. The examiner can normally be reached on Monday through Friday 7:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan D Donlon/
Examiner, Art Unit 3695
July 20, 2009

/Charles R. Kyle/
Supervisory Patent Examiner, Art Unit 3695